

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 162

May 11, 1995, 2:31 p.m.  
Page S-6494 Temp. Record

## INTERSTATE WASTE TRANSPORTATION/Stronger Flow Control Limit

**SUBJECT:** Interstate Transportation of Municipal Solid Waste Act of 1995 . . . S. 534. Chafee motion to table the Kyl amendment No. 769.

### ACTION: MOTION TO TABLE AGREED TO, 79-21

**SYNOPSIS:** As reported, S. 534, the Interstate Transportation of Municipal Solid Waste Act of 1995, will allow States to place limits on the import of out-of-State municipal solid waste, will provide limited authority to States and municipalities to specify the destination site for municipal solid waste in their districts (flow control), and will reinstate the groundwater monitoring exemption for small municipal landfills (that exemption was reversed as a result of a Sierra Club lawsuit).

**The Kyl amendment** would reduce the flow control authority in the bill. It would authorize flow control authority only until such time as the debt incurred prior to the *Carbone* decision was repaid. (On May 15, 1995, the Supreme Court struck down flow controls in *C&A Carbone, Inc., v. Town of Clarkstown, New York*, because they violate the interstate commerce clause of the Constitution.) If any debt were refinanced to be paid off at a later date, the flow control authority would expire at the original pay-off date. (The bill, in contrast, will extend existing flow control authority for a facility until its capital costs are paid off, until its existing contracts for delivery expire, or until the end of its useful life; however, under no circumstances will authority be extended beyond 30 years.)

Debate was limited by unanimous consent. Following debate, Senator Chafee moved to table the Kyl amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

On principle, we agree with the Kyl amendment, but out of fairness to investors and in order to increase the likelihood that this bill will pass, we must reluctantly oppose it. Briefly, the Public Securities Association has testified that approximately \$20 billion in bonds are in existence that were issued for building municipal waste disposal facilities. Investors bought those bonds with the understanding that the governments would order that all trash within their jurisdictions would have to be disposed of at their facilities,

(See other side)

YEAS (79)				NAYS (21)		NOT VOTING (0)	
Republican (39 or 72%)		Democrats (40 or 87%)		Republicans (15 or 28%)	Democrats (6 or 13%)	Republicans (0)	Democrats (0)
Abraham	Helms	Akaka	Inouye	Ashcroft	Bryan		
Bennett	Hutchison	Baucus	Johnston	Brown	Byrd		
Bond	Jeffords	Biden	Kennedy	Campbell	Feingold		
Burns	Kassebaum	Bingaman	Kerrey	Cochran	Kohl		
Chafee	Lugar	Boxer	Kerry	Craig	Robb		
Coats	Mack	Bradley	Lautenberg	Domenici	Rockefeller		
Cohen	McConnell	Breaux	Leahy	Gramm			
Coverdell	Packwood	Bumpers	Levin	Inhofe			
D'Amato	Pressler	Conrad	Lieberman	Kempthorne			
DeWine	Roth	Daschle	Mikulski	Kyl			
Dole	Santorum	Dodd	Moseley-Braun	Lott			
Faircloth	Shelby	Dorgan	Moynihan	McCain			
Frist	Simpson	Exon	Murray	Murkowski			
Gorton	Smith	Feinstein	Nunn	Nickles			
Grams	Snowe	Ford	Pell	Stevens			
Grassley	Specter	Glenn	Pryor				
Gregg	Thomas	Graham	Reid				
Hatch	Thompson	Harkin	Sarbanes				
Hatfield	Thurmond	Heflin	Simon				
	Warner	Hollings	Wellstone				

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

at the prices they demanded. This arrangement is known as "flow control." According to a study just released by National Economic Research Associates, flow control increases disposal costs by an average of 40 percent. In 1994, the Supreme Court ruled that flow controls are unconstitutional unless authorized by the Federal Government. The Federal Government has not authorized any flow control. Therefore, all the flow control laws on which basis \$20 billion has been invested are no longer valid. Waste companies that are not under contract to municipal dumps or incinerators can therefore take their trash to cheaper facilities. The result is that the value of these bonds is severely threatened. In fairness to the bondholders, this bill will allow flow control authority to continue for those districts that went into debt before the *Carbone* decision and which are using flow control to pay off their debts. That authority will continue for each facility until its debt is paid off, until existing contracts expire, or until the end of its useful life, whichever is later, but under no circumstances will it last longer than 30 years. We sympathize with our colleagues' objections to certain parts of this formulation, but for us the key point is that all flow control authority will end in 30 years. Basically, we agree with the *Carbone* decision, but many Senators do not. The exceptions for extending flow control authority were very carefully worked out with those Senators who disagree with the *Carbone* decision. Changing this compromise language, however meritoriously in our view, will not be viewed with favor by other Senators, and could lead to the rejection of this bill. We have achieved a very precarious balance on a sensitive issue. Upsetting the balance could make it impossible to pass. Therefore, reluctantly, we must urge our colleagues to table the Kyl amendment.

**Those opposing the motion to table contended:**

Our motivations are purely on principle. Our States do not have problems with the disposal of solid waste, nor do our local jurisdictions exercise flow control authority. Still, we agree with the *Carbone* decision--States should not have the right to exercise monopolistic control over trash in their jurisdictions. The only tangible result of allowing that control is that the cost of waste disposal goes up. According to a study just released by National Economic Research Associates, flow control increases disposal costs by an average of 40 percent. According to the Environmental Protection Agency, flow control is not needed for landfill financing, nor does it offer any added protection for human health or the environment. Private financing for waste disposal has proven readily available, and private compliance with disposal and recycling requirements is as good as government compliance. Given these facts, the only valid reason for Congress to allow existing flow control authority to continue is to allow the repayment of those bondholders who made investments in municipal trash facilities based on their understanding that those facilities would have monopolistic control over local trash. Allowing it to be extended based on contracts, or the working life of a facility, or on any other basis not related to bondholders should not be permitted. The Kyl amendment, in furtherance of this principle, would strike all the extensions of flow control in the bill except for the extension provided for the purpose of repaying bondholders. We support this amendment, and urge our colleagues to join us in voting against the motion to table.